UNITED NATIONS

A

General Assembly

Distr.
GENERAL

A/47/512
5 November 1992

ORIGINAL: ENGLISH

Forty-seventh session
Agenda item 32

LAW OF THE SEA

Report of the Secretary-General

Progress made in the implementation of the comprehensive legal regime embodied in the United Nations Convention on the Law of the Sea

CONTENTS

		Paragraphs	Page
I.	INTRODUCTION	1 - 4	3
II.	THE STATUS OF THE CONVENTION	5 - 9	3
III.	IMPACT OF THE CONVENTION ON STATE PRACTICE	10 - 68	4
	A. Territorial sea	12 - 20	5
	1. Breadth of the territorial sea	12 - 14	5
	2. Right of innocent passage	15 - 20	6
	B. Contiguous zone	21 - 22	7
	C. Straits used for international navigation	23 - 26	8
	D. Archipelagic waters	27 - 29	9
	E. Exclusive economic zone	30 - 42	9
	F. Continental shelf	43 - 44	12

92-49053 3714d (E) 101192 *121192*

/...

CONTENTS (continued)

		Paragraphs	Page
G.	Regime of islands	45 - 46	12
H.	Delimitation of maritime boundaries	47 - 51	13
I.	High seas	52 - 57	13
J.	Rights of land-locked States and freedom of transit	58	14
K.	Protection and preservation of the marine environment	59 - 63	15
L.	Marine scientific research	64 - 66	16
M.	International seabed area	67 - 68	16
IV.	GLOBAL COOPERATION	69 - 75	17
V.	REGIONAL AND SUBREGIONAL COOPERATION	76 - 80	18
VI.	CONCLUDING OBSERVATIONS	81 - 86	19

I. INTRODUCTION

1. The present report is submitted to the General Assembly in response to its resolution 46/78 of 12 December 1991, in paragraph 22 of which the Assembly requested the Secretary-General:

> "to submit a special report to the General Assembly at its forty-seventh session on the progress made in the implementation of the comprehensive legal regime embodied in the United Nations Convention on the Law of the Sea, in the light of the tenth anniversary in 1992 of its adoption, and to take such action, in consultation with States, as may be appropriate to mark the occasion."

2. In order to prepare for the present report and at the same time for the publication of a book on the impact of the United Nations Convention on the Law of the Sea on the practice of States to commemorate the tenth anniversary of its adoption, a meeting of 17 experts representing all the regions of the world was convened from 27 to 29 January 1992. Several of the experts were requested to make substantive contributions to the future publication. Those contributions have also been taken into account in the preparation of the present report.

3. The report consists of six sections. After the introduction (section I), section II gives an overview of the current status of the Convention. Section III describes general trends of State practice, with some examples as appropriate, with respect to 12 key subject areas covered by the Convention. Sections IV and V contain a summary of activities at the global and regional levels aimed at furthering international cooperation in implementing the regime embodied in the Convention. Section VI concludes the report with an overall assessment of the progress made so far in the implementation of that regime.

4. It should be noted that, since 1984, the Secretary-General has been reporting annually to the General Assembly on important developments relating to the Convention, including the work of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea. 1/

II. THE STATUS OF THE CONVENTION

5. The United Nations Convention on the Law of the Sea was open for signature from 10 December 1982 to 9 December 1984. During that time, 159 States and other entities referred to in article 305 signed the Convention. This is the highest number of signatories of any multilateral treaty. By 30 September 1992, 52 States had established their consent to be bound by the Convention, 50 instruments of ratification and two instruments of accession having been deposited with the Secretary-General of the United Nations. The Convention will enter into force 12 months after the deposit of the sixtieth instrument of ratification or accession.

6. Of the 52 States which have established their consent to be bound, 26 belong to the group of African States, 11 to the Asian group and 13 to the group of Latin American and Caribbean States. The two remaining States are European.

7. Practically all of the 52 States which have established their consent to be bound by the Convention are developing States. The industrialized States have expressed dissatisfaction with some of the terms of Part XI of the Convention and this has led them to refrain from ratifying or acceding to the Convention, particularly in view of the world economic situation that has changed fundamentally since the early 1980s. In 1990, in an effort to achieve universal participation in the Convention, the Secretary-General took the initiative to convene informal consultations aimed at addressing issues of concern to those States. On the basis of the results of the first series of six consultations held among a restricted number of Governments, a second round of consultations, with open-ended membership, took place in June and August 1992.

8. Although the Convention has not yet entered into force, many Governments have taken measures to implement the rules embodied in it. Competent international organizations have also taken a series of measures pursuant to its provisions. That process is generating patterns of consistent State practice which, in turn, is forming rules of customary international law, as well as influencing the work of international organizations and the decisions of international tribunals.

9. One factor that has undoubtedly contributed to those positive developments was the unique working method adopted by the Third United Nations Conference on the Law of the Sea. The method of working by way of consensus meant that debates, especially on key issues, were spread over several sessions and held in both committees and working groups (official and unofficial). As a result, the discussions were inevitably prolonged, but the texts which finally resulted had the valuable quality of being negotiated texts, which took due account of the legitimate concerns and interests of different States. 2/ Under such circumstances, Governments were more willing to incorporate in their national legislation the rules set forth in the Convention, accepting the burden as well as the benefit of the balanced provisions of the Convention.

III. IMPACT OF THE CONVENTION ON STATE PRACTICE

10. This section reviews the impact of the Convention, in spite of the fact that it has not yet entered into force, upon the practice of States based on all available sources, including legislation, diplomatic protests and treaties, as well as the decisions of international courts and tribunals and the work of international organizations, both global and regional. The section is divided into 12 subsections, dealing with the major maritime zones or areas defined by the Convention and with questions relating to land-locked States, environmental protection and marine scientific research.

11. The main focus of the review is the practice of States from 1982 to 1992. However, as much legislation was adopted during the Third United Nations Conference on the Law of the Sea, such legislation has also been taken into account, inasmuch as they reflect broadly agreed provisions that had emerged during the Conference.

A. Territorial sea

1. Breadth of the territorial sea

12. The Convention gives every State the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles from the baseline. Before the Third United Nations Conference on the Law of the Sea, the practice of States regarding the maximum permissible breadth of the territorial sea displayed significant divergencies, which the First and Second United Nations Conferences on the Law of the Sea, held, respectively, in 1958 and 1960, had failed to resolve. Thus the Convention provided a solution to a long-standing controversy. The agreement on a maximum of 12 miles was a key element in the overall agreement on the limits of national jurisdiction of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf, as well as in the acceptance as a whole of the regimes contained in Parts II and III, dealing with the territorial sea, the contiguous zone and straits used for international navigation.

13. By the end of June 1992, no less than 126 coastal States had established a territorial sea of 12 miles or less, of which 114 had a 12-mile limit with the remainder having limits of either three, four or six miles. 3/ Several States included in the total of 126 have withdrawn claims to more than 12 miles of territorial sea, 4/ clearly under the influence of the work of the Conference and the adoption of article 3 of the Convention. Several States, including Japan, the United Kingdom and the United States, which in the past used to object to claims of 12 miles, have ceased to do so and indeed have extended their own territorial seas to 12 miles. Some States still claim a territorial sea of 200 miles; 5/ others claim breadths less than 200 miles, but greater than 12 miles. 6/

14. The breadth of the territorial sea is measured from baselines which are also used to determine the breadth of other zones of national jurisdiction, such as the contiguous zone, the exclusive economic zone and the continental shelf. On that matter the Convention breaks very little new ground, as the terms of the Convention on the Territorial Sea and the Contiguous Zone of 1958 are very closely followed. Even new provisions, such as article 6 concerning reefs, reflect a body of State practice. In the case of the new provision in article 7, regarding highly unstable coastlines like those in a delta, its application to specific situations is so limited that its impact is very small.

2. Right of innocent passage

15. The 1982 Convention has reconfirmed the right of innocent passage as provided for in the Convention on the Territorial Sea and the Contiguous Zone of 1958. It has, however, further clarified that right. These clarifications protect the positions of both coastal and flag States in the exercise of the right of innocent passage.

16. The legal status of a key provision in the Convention relating to innocent passage was considered by the International Court of Justice in the Case concerning Military and Paramilitary Activities in and against Nicaragua in 1986. The Court found that article 18, paragraph 1 (b) "does no more than codify customary international law" as part of the freedom of communications. 7/

17. As a whole, the provisions of Section 3 of Part II concerning innocent passage in the territorial sea can be said to have had a greater impact on the practice of States than the provisions of the 1958 Convention, upon which the articles are based to a considerable extent. The new provisions in Section 3 include article 19, which sets out a detailed list of activities which render passage non-innocent. The legislation of many countries now includes a list of such activities. In general, States have followed the list accurately, but instances do exist of minor departures from the wording of article 19.

18. The influence of Section 3 can also be discerned in the Joint Statement signed on 23 September 1989 by the United States and the former Soviet Union concerning the right of innocent passage. 8/ That statement affirmed that the "relevant rules of international law governing innocent passage of ships in the territorial sea are stated in the 1982 United Nations Convention on the Law of the Sea ..., particularly in Part II, Section 3". The United States and the member States of the European Community have also utilized the Convention in formulating reservations in 1985 to regulations announced by the Libyan Arab Jamahiriya to confine innocent passage through its territorial sea by commercial ships to daylight hours only, provided prior information is given to the Libyan authorities at least 12 hours in advance of the proposed transit. 9/

19. Although there is now a general international consensus concerning the right of innocent passage and about the scope of activities which render passage non-innocent, there remain some differences in State practice with regard to warships. At the Third United Nations Conference on the Law of the Sea, the question of the right of innocent passage of warships was the subject of lengthy discussions. Proposals to the effect that warships should give prior notification or should seek prior permission before entering the territorial sea in exercise of the right of innocent passage were not included in the Convention. None the less, the legislation of a number of States contains provisions for such notification or permission. 10/

20. With respect to vessels carrying hazardous wastes, some States, in order to protect their marine environment, have enacted regulations preventing ships

carrying such wastes from entering their territorial sea. 11/ The 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal provides that the Convention shall not affect, inter alia, the sovereignty of States over the territorial sea and the exercise by ships of all States of navigational rights "as provided for in international law and as reflected in relevant international instruments" (art. 4 (12)). This compromise formula prompted Portugal to declare that it required the notification of all transboundary movements of such wastes across its waters, and several Latin American States, including Mexico, Uruguay and Venezuela, to declare that, under the Basel Convention, their rights as coastal States were adequately protected. Germany, Italy, Japan and the United Kingdom, on the other hand, declared that nothing in the Convention requires any notice to or consent of the coastal State for vessels exercising the right of innocent passage. 12/

B. Contiguous zone

21. Although the 1958 Convention on the Territorial Sea and the Contiguous Zone made provisions for a contiguous zone extending up to 12 miles from the baseline, from which the breadth of the territorial sea is measured, relatively few States enacted legislation establishing such a zone, whereby control necessary to prevent infringements of customs, fiscal, immigration or sanitary laws and regulations could be exercised. Article 33 of the 1982 Convention provides for a contiguous zone extending to a maximum limit of 24 miles from the baselines. On the basis of that provision, as of 30 June 1992, some 38 States have established contiguous zones. 13/ The increased popularity of the contiguous zone can be ascribed to at least two main causes: first, the problem of traffic in narcotic drugs is ever present and has led several coastal States to assume extra powers in order to prevent drug smuggling. A second explanation can be found in article 303 (2) concerning archaeological and historical objects found between the 12- and 24-mile limits. That provision gives to the coastal State an additional strand of competence over such objects out to a maximum of 24 miles. In the light of recent advances in the techniques of underwater recovery, several coastal States have experienced the need to exercise control over the work of divers, both in the territorial sea and beyond, and have moved to establish their jurisdiction in this regard.

22. National legislation on the contiguous zone is generally in conformity with the provisions of the 1982 Convention. Several States, however, have claimed a contiguous or similar zone for the protection of their security, although the Convention mentions only "customs, fiscal, immigration or sanitary" laws for control purposes (art. 33 (1) (a)). The United States has made formal protests against nine such claims (Bangladesh, Myanmar, Haiti, Sri Lanka, the Sudan, the Syrian Arab Republic, Venezuela, Viet Nam and Yemen). 14/

C. Straits used for international navigation

23. The Convention has established a special regime, called transit passage, for unimpeded navigation and overflight through straits which are used for international navigation and connecting one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone. At the Third United Nations Conference on the Law of the Sea, the question of straits used for international navigation was inextricably linked to that of the maximum permissible breadth of the territorial sea, which, in turn, was linked to the question of the extent of the exclusive economic zone. It constituted one of the fundamental elements of the "package deal". The regime of transit passage has been widely accepted in general terms by the international community and has become part of the practice of States, both of States bordering straits as well as of shipping States.

24. For example, on 2 November 1988, the Governments of France and the United Kingdom of Great Britain and Northern Ireland adopted a joint declaration 15/ concerning the delimitation of the territorial sea in the Straits of Dover that followed closely the concept of transit passage as provided for in the Convention. And on 27 December 1988, the United States declared on 27 December 1988 that all countries enjoy the right of transit passage "in accordance with international law, as reflected in the applicable provisions" of the Convention. 16/

25. The Convention stipulates that transit passage shall not be suspended (art. 44). When Indonesia announced the temporary closing to all ships of the Straits of Sunda and Lombok, the 12 member States of the European Community, Australia, Japan and the United States, considering those straits as qualifying for transit passage, lodged formal protests with the Government of Indonesia. 17/

26. Several treaties have taken account of the regime to be applied to straits used for international navigation. Examples are the 1978 bilateral treaties between Venezuela and the Netherlands concerning the delimitation of the maritime spaces between Venezuela and the Netherlands Antilles, and the 1978 treaty between Australia and Papua New Guinea about Torres Strait. A multilateral agreement which takes account of the provisions concerning passage through straits, as well as through other waters, is the Treaty of Rarotonga concerning Nuclear Free Zones in the South Pacific of 6 August 1985. 18/ The 1990 Protocol concerning Specially Protected Areas and Wildlife to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, also recognizes the right of "transit passage ... in accordance with international law". 19/

D. Archipelagic waters

27. The Convention for the first time recognizes the concept of "archipelagic States" (art. 46) and "archipelagic waters" (art. 49). An archipelagic State is defined as a State constituted wholly by one or more archipelagos, and may include other islands. Archipelagic waters are defined as comprising sea areas enclosed by archipelagic straight baselines joining the outermost points of the outermost islands and drying reefs of the archipelago, which also must satisfy the requirements set forth in article 47 of the Convention. Through those waters, ships of all States enjoy the right of innocent passage similar to that enjoyed in the territorial sea (art. 52). The Convention also recognizes a right of archipelagic sea lanes passage for ships through designated sea lanes and air routes thereabove (art. 53).

28. The following 15 States have claimed archipelagic status with or without specifying their archipelagic baselines: Antigua and Barbuda, Cape Verde, the Comoros, Fiji, Indonesia, Kiribati, the Marshall Islands, Papua New Guinea, the Philippines, Saint Vincent and the Grenadines, Sao Tome and Principe, Solomon Islands, Trinidad and Tobago, Tuvalu and Vanuatu. 20/ Most of the claims made by those States were inspired by and closely modelled on the Convention's provisions, in particular the law of Trinidad and Tobago. Nevertheless, in two cases, Cape Verde and the Philippines, the compatibility of their legislation with the criteria laid down in the Convention, in particular the ratio of the area of the water to the area of the land, has been questioned and protested by the United States. 21/

29. In the exchange of notes accompanying a treaty with Indonesia in 1988, the United States recognized the archipelagic States' principles as applied by Indonesia "on the understanding that they are applied in accordance with the provisions of Part IV of the 1982 United Nations Convention on the Law of the Sea" and that it respects international rights and obligations pertaining to transit in the archipelagic waters "in accordance with international law as reflected in that Part". 22/

E. Exclusive economic zone

30. The articulation of the concept of the exclusive economic zone was one of the major achievements of the Third United Nations Conference on the Law of the Sea. The political and economic impact of the exclusive economic zone on the practice of States has been very considerable, especially with regard to the conservation and management of living resources, the exploitation of the natural resources of the seabed and subsoil of the zone, the conduct of marine scientific research and the protection and preservation of the marine environment. It will be recalled that, in the exclusive economic zone, coastal States have sovereign rights over the natural resources of the zone and jurisdiction with respect to the establishment of artificial islands, installation and structures, marine scientific research, and the protection and preservation of the marine environment. In the exclusive economic zone,

the freedom of navigation and of overflight, as well as the freedom to lay submarine cables and pipelines and other internationally lawful uses of the sea related to these freedoms, are maintained for all States.

31. Eighty-six States have proclaimed exclusive economic zones within the limit of 200 miles from the baselines from which the breadth of the territorial sea is measured and a further 20 claim exclusive fishery zones.

32. In cases of coastal States facing relatively narrow semi-enclosed seas there is a tendency to proclaim exclusive economic zones or exclusive fishery zones with limited breadth or in limited areas. 23/ Thus the fishery zone of the Islamic Republic of Iran and Malta extend, respectively, up to 50 and 25 miles. France and Spain have not extended their exclusive economic zones in the Mediterranean Sea, which is so far free of any such claims; Japan has also excluded the areas facing part of the Sea of Japan, the Yellow Sea and the East China Sea from its exclusive fishery zone.

33. Most of those States which have established exclusive economic zones claim "sovereign rights", as stipulated in the Convention, with respect to natural resources of the zone, and jurisdiction over matters such as artificial islands, protection of the marine environment and marine scientific research. There are, however, several States, including India, Mauritius, Myanmar and Pakistan, which assert "exclusive jurisdiction" or "exclusive rights" with respect to non-resource activities.

34. Developments, particularly among the States bordering the North Sea, seem to confirm that States may proclaim exclusive economic zones without adopting detailed legislation setting out all the rights that would belong to them under the Convention, or that States may claim some, but not all, of the rights encompassed in the notion of an exclusive economic zone without formally establishing such a zone.

35. As regards fisheries, the work of the Food and Agriculture Organization of the United Nations (FAO) demonstrates that articles 61 and 62, considered together with article 73 of the Convention, provide the main basis for the practice of States in the matter of the conservation and use of fish resources in the exclusive economic zone. 24/ In cases where coastal States have claimed exclusive fisheries zones, their legislation is also based to a considerable extent upon the precise terms of those articles.

36. There do not appear, however, to be many cases where such legislation contains specific provisions regarding the concepts of total allowable catch and optimum utilization of resources and the access of third States to the surplus. There are also several States, including Antigua and Barbuda, Cape Verde, Myanmar and Senegal, which provide for imprisonment as a penalty for violating fishery legislation, contrary to article 73 of the Convention.

37. Article 63, paragraph 1, which deals with shared stocks that straddle national boundaries, has not given rise to problems in practise. However, paragraph 2 of that article concerning stocks which straddle the 200-mile zone

and the high seas, has led to a series of problems in different parts of the world. Those problems are linked to the question of the regime of fisheries on the high seas. Regional organizations have not always been successful in finding solutions to the outstanding problems. As a result, the question was considered by the United Nations Conference on Environment and Development in June 1992, which recommended the convening of an intergovernmental conference under United Nations auspices "with a view to promoting effective implementation of the provisions of the United Nations Convention on the Law of the Sea on straddling fish stocks and highly migratory fish stocks". 25/ It further recommended that "the work and the results of the conference should be fully consistent with the provisions of the United Nations Convention on the Law of the Sea, in particular the rights and obligations of coastal States and States fishing on the high seas". 26/

38. Since 1982, new agreements have been concluded and new organizations have been created on a regional basis to consider the conservation and management of the highly migratory species referred to in article 64 of the Convention. This is the case of the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America concluded in 1987. 27/

39. Similarly, in the case of the anadromous species dealt with by article 66, several older bilateral and regional agreements have been modified and some new conventions, such as the 1992 Convention for the Conservation of Salmon in the North Atlantic 28/ and the 1992 Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean 29/ have been adopted, incorporating the basic principles contained in that article. These arrangements have generally played a valuable role in conserving such stocks.

40. With respect to articles 69 and 70 of the Convention dealing with the right of land-locked and geographically disadvantaged States to participate on an equitable basis in the surplus of the living resources in the exclusive economic zones of coastal States, it appears that state practice has not been influenced by those provisions. It may be noted, however, that the recent agreements signed in February 1992 between Peru and Bolivia contain provisions regarding the possibility for the two countries to enter into joint ventures with regard to fisheries. 30/

41. Regarding the regime on artificial islands, installations and structures in the exclusive economic zones, States have generally been reluctant to adopt the detailed rules contained in article 60 of the Convention. A number of States have made no distinction between artificial islands, installations and structures constructed for economic purposes and installations and structures constructed for other purposes and which are not designed to interfere with the exercise of the rights of the coastal States in the zone. They have thus disregarded the explicit limitation the article prescribes to their nature and purpose. 31/ There appears also to be a tendency to establish protection zones around artificial islands, installations and structures that are wider than 500 metres, the maximum distance permitted by the Convention (art. 60 (5)). 32/

42. Pursuant to article 60, paragraph 3, a set of guidelines for the removal of offshore installations were adopted in 1989 by the International Maritime Organization (IMO). 33/ On the basis of article 60, paragraph 6, IMO also adopted in 1987 "Measures to Prevent Infringement of Safety Zones Around Offshore Installations or Structures". 34/

F. Continental shelf

43. While the definition of the continental shelf contained in the 1982 Convention has significantly changed from the definition given by the 1958 Geneva Convention on the Continental Shelf, its legal regime has been hardly modified and is firmly rooted in customary international law. The significant change applies to the extension of the continental shelf to the continental margin, where it extends beyond 200 miles.

44. Most of the States which have enacted new legislation in the light of the Convention have not taken measures to amend their laws, which continue to follow the criteria of the 1958 Convention. This is presumably due to the fact that, in most cases, the legislation on the exclusive economic zone covers the coastal States' rights with respect to the continental shelf, and also due to the complexity of the definition of the continental shelf contained in article 76. In view of the highly technical nature of the studies required for the application of article 76 by coastal States, there is need for greater cooperation among States and for technical assistance, for instance, with respect to the acquisition of geophysical and geological data concerning the continental margin.

G. Regime of islands

45. The provisions of article 121 on the regime of islands are of great interest to island States. The confirmation by article 121 (2) that, in principle, islands generate maritime sovereignty and jurisdiction for all purposes in the same way as mainland territory, is of great political and economic importance for island States, especially those in the South-West Pacific. The award rendered on 10 June 1992 by an international arbitral tribunal in the delimitation of Maritime Boundaries between Canada and France has reconfirmed the provisions contained in article 121 (2). 35/

46. Article 121 (3), regarding rocks, has not had a great impact upon the practice of States. Existing claims to 200-mile zones made before the adoption of the Convention have, in the main, not been withdrawn. New claims since 1982 to 200-mile zones measured from small features, which may be described as rocks, have generated protests in some cases. As the result, the practice of States displays unevenness.

H. Delimitation of maritime boundaries

47. Numerous bilateral agreements have been concluded for the delimitation of maritime boundaries between States, 36/ the majority of which were concluded before the adoption of the Convention in 1982.

48. With the acceptance by the international community of the concept of the exclusive economic zone, a large number of States have already utilized the concept of the single maritime boundary in several regions of the world.

49. In the Gulf of Maine Case, the International Court of Justice was requested for the first time to determine a "single maritime boundary" applicable to both the water column and the seabed. 37/ In the above-cited case concerning the delimitation of the maritime areas between Canada and France, the arbitral tribunal had to establish also a single line of delimitation.

50. Articles 74 and 83 of the Convention stipulate that the goal of delimitation agreements must be the achievement of an "equitable solution". But the Convention has avoided laying down any rigid rules or methods of delimitation. In that sense States are free to choose the mode of delimitation which leads to an equitable solution, provided it is done "on the basis of international law".

51. The jurisprudence of the International Court of Justice supports the requirements contained in the Convention that maritime boundaries must be determined by the application of equitable principles, taking into account all the relevant circumstances so as to achieve an equitable result. 38/ The arbitral tribunal in the case between Canada and France stated in its award of 10 June 1992 that the fundamental norm to be applied "requires the delimitation to be affected in accordance with equitable principles, or equitable criteria, in order to achieve an equitable result". 35/ It went on to assert that "the underlying premise of this fundamental norm is the emphasis on equity and the rejection of any obligatory method". 39/

I. High seas

52. Much of Part VII of the Convention was based directly upon the Convention on the High Seas and the Convention on Fishing and the Conservation of the Living Resources of the High Seas, both of 29 April 1958. Accordingly, a great part of the regime as codified in the Convention reflects a long practice of States, particularly with regard to navigation. It is the practice of States that is reflected in the Convention and not the Convention that has had a major impact upon State practice.

53. With regard to fishing, however, the introduction of the 200-mile exclusive economic zone has had the effect of increasing fishing activities on the part of distant water fishing States on the high seas. This increased effort has led to new problems in certain parts of the world, particularly

where there has been large-scale fishing of stocks which straddle the 200-mile limit. Those problems have been taken up in regional fisheries organizations, such as the North Atlantic Fisheries Organization. In addition, the problems were reviewed in several forums, including the International Conference on Responsible Fishing, held in Cancun from 6 to 8 May 1992. The Conference adopted the Declaration of Cancun, containing agreement "to promote, within the legal framework provided by the United Nations Convention on the Law of the Sea, effective international cooperation towards the achievement of rational and sustainable management and conservation of the living resources of the high seas". 40/ The Declaration, in its preamble, referred more generally to the Convention as containing "relevant legal principles applying to fishing in areas under national jurisdiction and on the high seas". 41/

54. Reference should also be made to the above-mentioned recommendation made by the United Nations Conference on Environment and Development regarding straddling stocks and highly migratory species (see para. 37 above).

55. The principles and provisions of the Convention relating to the conservation and management of the high seas living resources were also affirmed by the General Assembly in its resolutions on large-scale pelagic drift-net fishing, 42/ in which the Assembly recommended moratoria or progressive reduction of such fishing because of its possible indiscriminate and wasteful nature.

56. Further, the Convention for the Prohibition of Fishing with Long Drift-nets in the South Pacific, done at Wellington on 24 November 1989, recalls in its preamble "the relevant rules of international law, including the provisions of the United Nations Convention on the Law of the Sea - in particular Parts V, VII and XVI". 43/

57. Other new provisions in Part VII have led to changes in the regime of the seas. For example, article 108 concerning illicit traffic in narcotic drugs, which calls for cooperation among States, has been followed by the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 44/ which marks a significant increase in international cooperation. Article 109 concerning unauthorized broadcasting has been implemented in North-West Europe, where the problem of "pirate" broadcasting was felt more acutely. The extension of the right of hot pursuit into the exclusive economic zone of another State has now been generally accepted.

J. Rights of land-locked States and freedom of transit

58. At the Third United Nations Conference on the Law of the Sea, the group of land-locked States put forward proposals designed to strengthen the right of access of those States to the sea. Their efforts were partially successful with the result that Part X of the Convention marks an advance from the perspective of the land-locked State over the 1965 New York Convention on the Transit Trade of Land-locked States. Since 1982, the number of land-locked States has increased, partly as a result of the dissolution of the former

Soviet Union. The question of access to the sea has been a significant factor in relations among States, in particular between India and Nepal and between Bolivia and Peru, 45/ the latter two having recently concluded several agreements granting right of access to and from the sea, free transit, as well as the use of port facilities. The full effect of Part X, however, must await the entry into force of the Convention, particularly with regard to the new provisions contained in article 69 dealing with the right of land-locked States to participate on an equitable basis in the exploitation of part of the surplus of the living resources of the exclusive economic zones of the coastal States of the same region or subregion.

K. Protection and preservation of the marine environment

59. Part XII of the Convention was the first attempt to deal with the protection and preservation of the marine environment as a whole, providing measures for controlling all sources of marine pollution and imposing obligations on States to achieve that purpose. Many technical conventions, such as the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 46/ adopted after the Stockholm Conference on the Human Environment, were already in existence when the negotiations started. They influenced the drafting of Part XII and promoted the legal framework to combat and preserve the marine environment from any source of pollution, which has, in turn, influenced considerably further practice on the subject.

60. At the national level, the legislation of over 80 States has made provisions for jurisdiction for the protection and preservation of the marine environment in their exclusive economic zones. Few of them have enacted detailed provisions designed to implement articles 207 to 222 of the Convention, which require States to adopt and enforce appropriate laws and regulations.

61. The legislation of several States claims "exclusive jurisdiction" over environmental protection within their exclusive economic zones, despite the fact that the Convention confers upon States only "jurisdiction" with regard to the protection and preservation of the marine environment (article 56 (1)). Further, no reference is made in many national laws to "generally accepted international rules and standards" nor to the involvement of "competent international organizations", though they are required in several articles of the Convention.

62. A great number of global and regional conventions have been adopted during and after the Third United Nations Conference on the Law of the Sea, reflecting or elaborating on some aspects of the relevant provisions. 47/ There are about 20 conventions of a general nature, including eight regional conventions adopted within the framework of the Regional Seas Programme of the United Nations Environment Programme (UNEP). These also include the two most recent conventions adopted in April 1992 for the Baltic Sea and the Black Sea, respectively. With regard to the various sources of pollution, five conventions/protocols have been adopted on land-based sources, nine on vessel

sources, six on dumping, two on seabed activities subject to national jurisdiction, and two on pollution from or through the atmosphere. In addition, more than a dozen conventions and protocols have been adopted on environmental emergencies, five on the protection of habitats and biological diversity, one on environmental impact assessment, four on the transport of hazardous wastes and material, nine on the question of liability and compensation for environmental damage, and at least four on the conservation of living resources.

63. Apart from treaty-making, some of the provisions of Part XII have brought specific impacts on certain regions in their cooperative endeavours to protect their environment. For example, article 234 concerning ice-covered areas has served as a basis for intensified cooperation among the States bordering the Arctic Ocean. 48/ North Sea States are also studying a proposal to implement in a coordinated manner many of the provisions in Part XII. 49/

L. Marine scientific research

64. In Part XIII, the Convention has struck a balance between the rights of the coastal States to regulate and authorize the conduct of marine scientific research in the zones under their sovereignty or jurisdiction and the rights of the researching States to carry out the research as long as it has no bearing on natural resources.

65. The Convention provisions have influenced the practice of both researching and coastal States. Those States which have enacted legislation on the subject of marine scientific research have based their provisions upon the terms of Part XIII to a considerable extent, although certain minor deviations can be noticed in certain cases.

66. In some countries, there is a feeling that the requirements set forth in the Convention may, at least in some cases, be too heavy a burden and create unwarranted difficulties for science. They welcome therefore attempts at standardization of the forms for obtaining permits 50/ and are keen to develop simplified procedures within regional or subregional groupings. 51/

M. International seabed area

67. The regime of the Convention on the international seabed area, as embodied in Part XI, has proved to be unacceptable to industrialized States and has led them to withhold ratification of, or accession to, the Convention. However, resolution II of the Third United Nations Conference on the Law of the Sea concerning preparatory investments in pioneer activities relating to polymetallic nodules has attracted the interest of several Governments, both developing and developed. Six pioneer investors have been registered with the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea established by resolution I of the Conference. It appears unlikely, however,

that any mining activity will commence during the remaining part of the present century.

68. The General Assembly's call, repeated every year, for achieving a universal participation in the Convention, has prompted the Secretary-General to convene consultations aimed at addressing outstanding issues concerning Part XI. So far, the discussions have permitted States to identify the issues and some areas of general agreement, but have not yet yielded practical results. Furthermore, the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea has completed most of its work relating to the establishment of those institutions and has started to prepare provisional final reports on the work accomplished during its 10 years of existence.

IV. GLOBAL COOPERATION

69. At the global level, a number of cooperative measures have been taken, particularly by international organizations of a universal character, in respect of, or on the basis of, the 1982 Convention.

70. Every year since the adoption of the Convention, the General Assembly has included in its agenda an item on the law of the sea, under which Member States have focused their attention on the significance of the Convention, and adopted with an overwhelming majority a resolution calling upon States to consider ratifying the Convention and otherwise strengthening its regime.

71. On the basis of the mandate given by those General Assembly resolutions and the functions expected in the Convention as its depositary, the Secretary-General, through the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs, has been conducting various activities in order to promote uniform and consistent application of the Convention and to provide assistance to States in marine policy development and integrated ocean management in the context of the comprehensive ocean regime embodied in the Convention. The Division has also convened, on an ad hoc basis, Interagency Consultations on Ocean Affairs with a view to coordinating activities among various United Nations agencies and bodies with ocean-related activities.

72. In the field of fisheries, FAO periodically reviews, through the Committee on Fisheries, fishery problems world wide with the participation of its regional fishery commissions, as well as a number of regional fishery bodies that are not part of FAO. In 1984, FAO convened a World Conference on Fisheries Management and Development, which adopted the Strategy for Fisheries Management and Development. The Strategy starts from the premise that the new regime concerning the resources of the world's oceans, as embodied in the 1982 Convention and in the practice of States, particularly since the mid-1970s, has resulted in global acceptance of the coastal States' authority to manage fisheries within their jurisdiction. 52/

73. In 1986, IMO, which is considered the "competent international organization" for a number of provisions in the Convention, conducted an extensive study, in consultation with the United Nations Secretariat, on the implications of the Convention for the Organization's activities, indicating the possible need for adjustments to be made by relevant bodies of IMO with respect to existing conventions and for taking new measures in the light of the provisions of the Convention. 53/ A series of actions have been taken by appropriate forums of IMO in response to the study. Some other measures that had preceded it also took account of the emerging new regime of the Convention. 54/

74. After some 10 years of analysis and discussion, particularly in the light of the 1982 Convention, the Intergovernmental Oceanographic Commission (IOC) of the United Nations Educational, Scientific and Cultural Organization (UNESCO) recommended amendments to its statute, and these were approved by the General Conference of UNESCO in November 1987. 55/

75. In a latest development, as mentioned above, a decision was taken by consensus at the United Nations Conference on Environment and Development to recommend the convening of a global conference with a view to promoting effective implementation of the Convention's provisions on straddling and highly migratory fish stocks.

V. REGIONAL AND SUBREGIONAL COOPERATION

76. The Convention encourages regional cooperation in a number of contexts. Such cooperation is particularly required for the conservation of living resources, the protection and preservation of the marine environment, and the promotion of marine scientific research and marine technology. Although some regions were active in developing cooperation on ocean issues even prior to the Third United Nations Conference on the Law of the Sea, the Convention has obliged them to adjust to the new regime and also prompted them to take new measures. In other regions, entirely new initiatives were taken in order to maximize benefits for the coastal States and better protect their common resources and environment, as recognized by the Convention.

77. The prompt adjustments to the new regime created by the Convention were most conspicuous in the field of fisheries cooperation: in many cases, existing regional arrangements were either revised or replaced by new ones before or within a few years after the Convention's adoption. 56/ Furthermore, new agreements were adopted in such regions of traditional cooperation as the North Pacific, the North Atlantic, and the South-East Atlantic. Entirely new forms of regional cooperation were started among the South Pacific countries by establishing a Forum Fisheries Agency (FFA), and among the members of the Latin American Economic System through the Latin American Organization for Fishery Development (OLDEPESCA). With the adoption of the Dakar Convention in July 1991 on Fisheries Cooperation among the 22 African States bordering the Atlantic Ocean, those African countries are also making efforts to harmonize their policies and cooperate on the upgrading and marketing of their fisheries products.

78. In the field of environmental protection, a number of new conventions have been added to existing ones, notably in such regions as the North Sea and the Baltic. It is also particularly noteworthy that, as mentioned above, for the first time the Black Sea States have recently adopted a comprehensive convention on protection of the marine environment, and the States bordering the Arctic have approved a common strategy for the protection of the Arctic environment. The Regional Seas Programme of UNEP launched new initiatives in several new regions, including the Mediterranean, the Caribbean, the Gulf region, the Red Sea and the Gulf of Aden, West and Central Africa, East Africa, the Pacific Coast of South America and the South Pacific. 57/

79. A more comprehensive cooperation in ocean affairs with marked emphasis on the new law of the sea regime embodied in the Convention has been initiated in two regions. In the Indian Ocean region, after a few years of cooperative efforts within the framework of the Indian Ocean Marine Affairs Cooperation Conference (IOMAC), the participating States adopted in 1990 the Agreement on the Organization for the Indian Ocean Marine Affairs Cooperation, thus bringing the conference mechanism into a permanent institution. A basic objective of the Organization is to promote cooperation among the States in the region, bearing in mind the ocean regime embodied in the United Nations Convention on the Law of the Sea, especially in such fields as science and technology, natural resources, law, policy and management, transport and communication and environment.

80. In the South Atlantic region, the States members of the Zone of Peace and Cooperation of the South Atlantic have recently started to focus their attention on their common needs in marine affairs in the light of the 1982 Convention. To that end, two technical seminars of experts were held on the law of the sea and ocean affairs in Brazzaville, from 12 to 15 June 1990, and in Montevideo, from 3 to 6 April 1991, with the assistance of the Division for Ocean Affairs and the Law of the Sea of the United Nations Office of Legal Affairs.

VI. CONCLUDING OBSERVATIONS

81. From the foregoing world-wide survey of the practice of States and international organizations, it may be concluded that the Third United Nations Conference on the Law of the Sea and the United Nations Convention on the Law of the Sea have generated a considerable amount of practice and activities in various areas of the law of the sea in the past two decades and that there has been a striking degree of convergence of practice towards accepting the concepts, principles and basic provisions embodied in the Convention. Such acceptance is notable, particularly in respect of the territorial sea, the regime of straits used for international navigation, the archipelagic waters, the exclusive economic zone, and the protection and preservation of the marine environment. This is truly remarkable in view of the fact that the Convention has not yet entered into force and that many of the concepts and rules in the above-mentioned fields are totally new in the history of the law of the sea.

82. Progress in implementing the regime embodied in the Convention, however, has been slow or lacking in certain areas, such as the new criteria for defining the continental shelf, access to resources in the exclusive economic zone of other States, the control of certain types of pollution, and the transfer of technology, or in some others, such as the right of transit for land-locked States. Furthermore, States have not generally incorporated all the detailed provisions of the Convention into their domestic legislation.

83. With respect to the settlement of disputes, which is not covered by this survey, since the new regime contained therein must await the entry into force of the Convention, it must be stressed that several disputes have, in fact, been referred to the existing mechanisms, notably the International Court of Justice and ad hoc international arbitration. Those dispute-settlement mechanisms are indeed mentioned in the Convention.

84. Finally, the part of the Convention which deals with the international regime for the development of mineral resources of the deep seabed does not lend itself to an analysis of state practice as the practical implementation of such a regime does not seem feasible in the near future. That part of the Convention, as has already been mentioned, is not accepted by industralized States.

85. The general trends described above, however, do not exclude some exceptional cases where state practice is not in conformity with, or clearly deviates from, the relevant provisions of the Convention. These are particularly in the areas of the breadth of the territorial sea and the nature of the coastal State's jurisdiction in the contiguous zone and the exclusive economic zone with respect to security, fisheries, pollution control and marine scientific research.

86. Despite those inconsistencies, it must be stressed that the Convention has contributed significantly towards a general trend of harmonization of state practice in conformity with the new legal regime it has established. Thus, it is clear that the Convention, even before its entry into force, has already played a significant role in maintaining international stability and promoting peaceful relations among States, particularly as they relate to the uses of the seas and oceans. That trend is expected to continue as more and more States develop their practices in conformity with the Convention.

Notes

1/ A/39/647, A/40/923, A/41/742, A/42/688, A/43/718, A/44/650, A/45/721 and A/46/724.

2/ This point has been noted by the International Court of Justice in the case concerning Delimination of the Marine Boundary in the Gulf of Maine Area (I.C.J. Reports 1984, p. 246) and the case concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta) (I.C.J. Reports 1985, p. 13).

Notes (continued)

3/ The Law of the Sea: National Claims to Maritime Jurisdiction (United Nations publication, Sales No. E.91.V.15), p. 11. Subsequent to that publication, Belize and Qatar have extended their territorial sea to 12 miles.

4/ For example, Cape Verde, Gabon, Ghana, Guinea-Bissau, Madagascar, Mauritania and the United Republic of Tanzania have changed their claims from 50, 70, 100, 150 or 200 miles to 12 miles. Argentina, which had claimed since 1966 sovereignty over the 200-mile area, came to accept gradually the distinction between the territorial sea and the exclusive economic zone and, by its Act of 14 August 1991, formally consolidated the distinction between the two zones. Albania also has changed its 15-mile claim to 12 miles.

5/ These are: Benin, Brazil, Congo, Ecuador, El Salvador, Liberia, Nicaragua, Panama, Peru, Sierra Leone, Somalia and Uruguay. However, Brazil ratified the Convention and changed its constitution in 1988, which includes the territorial sea and an exclusive economic zone as part of the Brazilian territory.

6/ These are: Angola (20 miles), Cameroon (50 miles), Nigeria (30 miles), the Syrian Arab Republic (35 miles) and Togo (30 miles).

7/ I.C.J. Reports 1986, p. 111.

8/ Law of the Sea Bulletin, No. 14 (December 1989), p. 13, para. 1.

9/ For the text of the protest made by the United States, see the Law of the Sea Bulletin, No. 6 (October 1985), p. 40 (nv/85/11).

10/ States which require such notification or permission include: Bangladesh, Bulgaria, Brazil, China, Denmark, Egypt, Finland, Iran (Islamic Republic of), Nigeria, Oman, Pakistan, Somalia, Sri Lanka, Sweden and Turkey.

11/ See for example, note verbale of Haiti dated 18 February 1988, in the Law of the Sea Bulletin, No. 11 (July 1988), p. 13.

12/ Multilateral Treaties Deposited with the Secretary-General (United Nations publication, Sales No. E.92.V.4), document ST/LEG/SER.E/10, pp. 872-873.

13/ The Law of the Sea: National Claims to Maritime Jurisdiction, op. cit., p. 11.

14/ Limits in the Seas, No. 112, United States Responses to excessive national maritime claims, United States Department of State (1992), p. 34.

15/ Law of the Sea Bulletin, No. 14 (December 1989), p. 14.

Notes (continued)

16/ The Law of the Sea: Current Developments in State Practice, No. 11 (United Nations publication, Sales No. E.89.V.7), p. 83.

17/ T. Treves, "Codification du droit international et pratique des etats dans le droit de la mer", Recueil des cours, vol. 223 (1990-iv), p. 134. See also the American Journal of International Law, vol. 83 (1989), 17, p. 559.

18/ The Law of the Sea: Current Development in State Practice, vol. I (United Nations publication, Sales No. E.87.V.3), pp. 192-206.

19/ Protocol concerning Specially Protected Areas and Wildlife to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, 1990, art. 5(2) (c).

20/ For the relevant legislation of most of these States, see The Law of the Sea: Practice of Archipelagic States (United Nations publication, Sales No. E.92.V.3).

21/ Limits in the Seas, op. cit. p. 45.

22/ American Journal of International Law, vol. 83 (1989), p. 561.

23/ The Law of the Sea: National Claims to Maritime Jurisdiction, op. cit., pp. 68 and 80.

24/ See FAO Fisheries Technical Paper No. 223 "Fisheries Regulations Under Extended Jurisdiction and International Law" (1982), and the documents issued for the FAO Expert Consultation on the Conditions of Access to the Fish Resources of the Exclusive Economic Zone (1983).

25/ Agenda 21 (A/CONF.151/26 (vol. II) and Corr.1, annex II), chap. 17, para. 17.49.

26/ Ibid.

27/ Law of the Sea Bulletin, No. 10 (November 1987), p. 24.

28/ TIAS, No. 10789.

29/ Copy of the official text is available for consultation in the Division for Ocean Affairs and the Law of the Sea.

30/ The Law of the Sea Bulletin, No. 21 (1992), p. 87.

31/ B. Kwiatkowska, The 200 Mile Exclusive Economic Zone in the New Law of the Sea (Dordrecht/Boston/London, Martinus Nijhiff publishers, 1989), p. 114; see also Treves, op. cit., pp. 176-177.

Notes (continued)

32/ E. Ulfstein, "The conflict between petroleum production, navigation and fisheries in international law", Ocean Development and International Law, vol. 19 (1988), p. 233.

33/ Guidelines and Standards for the Removal of Offshore Installations and Structures on the Continental Shelf and in the Exclusive Economic Zone. IMO Assembly resolution A/672 (16), 19 October 1989 (Annual Review of Ocean Affairs: Law and Policy, Main Documents, vol. III (1968)), p. 1095.

34/ IMO Assembly resolution A/621 (15). Annual Review of Ocean Affairs: Law and Policy, Main Documents, vols. I and II (1985-1987), p. 338.

35/ A copy of the Award which relates to the maritime space of the French islands of Saint-Pierre-et-Miquelon off Newfoundland, Canada, is available in the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs.

36/ For the texts of many such treaties, see The Law of The Sea: Maritime Boundary Agreements (1942-1969), (United Nations publication, Sales No. E.91.V.11); The Law of the Sea: Maritime Boundary Agreements (1970-1984) (United Nations publication, Sales No. E.87.V.12); and The Law of the Sea: Maritime Boundary Agreements (1985-1991) (United Nations publication, Sales No. E.92.V.2).

37/ I.C.J. Reports 1984, p. 295.

38/ See, for example, the Judgments in the cases concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya), I.C.J. Reports 1982, p. 47; the Gulf of Maine, I.C.J. Reports 1984, p. 295; and the Continental Shelf (Libyan Arab Jamahiriya/Malta), I.C.J. Reports 1985, p. 33.

39/ Award of 10 June 1992, note 35 above, para. 38.

40/ A/CONF.151/15, p. 6.

41/ Ibid., p. 3.

42/ General Assembly resolution 44/225 of 22 December 1989, 45/197 of 21 December 1990 and 46/215 of 20 December 1991.

43/ International Legal Materials, vol. 29 (November 1990), p. 1449.

44/ E/CONF.82/15.

45/ Supra note 30.

46/ United Nations, Treaty Series, vol. 1046, No. 15749, p. 120.

Notes (continued)

47/ For a list of such conventions, see A/44/461 and Corr.1, annex and A/CONF.151/10.

48/ See Arctic Environmental Protection Strategy, adopted on 14 June 1991 by the eight Arctic countries (International Legal Materials, vol. XXX (November 1991), p. 1624).

49/ See the Final Declaration of the Third International Conference on the Protection of the North Sea, 1990, (LDC.13/INF/6).

50/ An attempt at standardization of the forms for seeking consent and for granting permission to conduct research in areas of national jurisdiction is contained in The Law of the Sea. Marine Scientific Research: A Guide to the Implementation of the Seabed Provisions of the United Nations Convention on the Law of the Sea (United Nations publication, Sales No. E.91.V.3).

51/ For example, the Baltic Marine Environment Protection Commission adopted a recommendation urging the Parties to the Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area to apply certain simplified procedures for research activities to be conducted in the areas under national jurisdiction. Discussions on a possible harmonization and simplification of procedures are also under way within the European community.

52/ Report of the FAO World Conference on Fisheries Management and Development, Rome, 27 June-6 July 1984 (FAO, 1984), p. 12.

53/ "Implications of the United Nations Convention on the Law of the Sea, 1982, for the International Maritime Organization (IMO)" (IMO document LEG/MISC/1, 20 October 1986).

54/ For example, the "General Provisions on Ships' Routing", adopted by the IMO Assembly in 1985 by resolution A/572 (14).

55/ See A/43/718, para. 124.

56/ See J. E. Carroz, "Institutional aspects of fishery management under the new regime of the oceans", San Diego Law Review, vol. 21 (1984), p. 513.

57/ See A/44/461 and Corr.1 and A/CONF.151/10.